



STATE OF INDIANA

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January 10, 2013

Kelly S. Thomas
DOC 127285
4490 W. Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 12-FC-362; Alleged Violation of the Access to Public Records Act by the Elkhart Police Department

Dear Mr. Thomas:

This advisory opinion is in response to your formal complaint alleging the Elkhart Police Department (“Department”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.*

BACKGROUND

In your formal complaint, you allege that you mailed a written request for records to the Department on November 19, 2012 for records relating to a voluntary statement made by a certain individual in connection with Cause No. 20-C01-0407-MR-00095. On December 3, 2012, the Department denied your request in writing pursuant to the investigatory records exception found under I.C. § 5-14-3-4(b)(1). The Department provided you with the contact information for the Elkhart County Prosecutor, a separate public agency, for any assistance it would be able to render.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” *See* I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department’s public records during regular business hours unless the records are exempted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the

request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days *of receipt*, the request is deemed denied (emphasis added). *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

The APRA provides that a law enforcement agency retains the discretion to disclose its investigatory records. *See* I.C. § 5-14-3-4(b)(1). An investigatory record is defined as “information compiled in the course of the investigation of a crime.” *See* I.C. § 5-14-3-2(h). The investigatory records exception does not apply only to records of ongoing or current investigations; rather, it applies regardless of whether a crime was charged or even committed. The exception applies to all records compiled during the course of the investigation, even after an investigation has been completed. The investigatory records exception affords law enforcement agencies broad discretion in withholding such records. *See Opinion of the Public Access Counselor 09-FC-157*. “Generally, a police report or incident report is an investigatory record and as such may be excepted from disclosure pursuant to I.C. § 5-14-3-4(b)(1).” *Id.* As a witness statement to a crime compiled by a law enforcement agency is clearly an “investigatory” record, it is my opinion that the Department did not violate the APRA by exercising its discretion and denying your request pursuant I.C. § 5-14-3-4(b)(1).

CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Tim Balyeat